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c Pr33 East York (Borough of) Act, 1992

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CHAPTER Pr33

An Act respecting the Borough of East York

Assented to July 27th, 1992

Preamble	<p>The Corporation of the Borough of East York has applied for special legislation in respect of the matters set out in this Act.</p> <p>It is appropriate to grant the application.</p> <p>Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:</p>	<p>(d) an elevator, escalator, stairway or corridor in any building,</p> <p>(e) a bus shelter,</p> <p>(f) a church or other place of worship, and</p> <p>(g) any enclosed indoor place of public assembly;</p>
Definitions	<p>1. In this Act,</p> <p>“Corporation” means The Corporation of the Borough of East York;</p> <p>“employee” includes a person who,</p> <p style="padding-left: 20px;">(a) performs any work for or supplies any services to an employer, or</p> <p style="padding-left: 20px;">(b) receives any instructions or training in the activity, business, work, trade, occupation or profession of the employer;</p> <p>“employer” includes any person who as the owner, proprietor, manager, superintendent or overseer of any activity, business, work, trade, occupation or profession, has control over or direction of, or is directly or indirectly responsible for the employment of a person;</p> <p>“enclosed” means closed in by a roof or ceiling and four walls, with or without windows, and with appropriate openings for ingress or egress;</p> <p>“enclosed public place” means an enclosed indoor area that is open to the public and includes,</p> <p style="padding-left: 20px;">(a) those parts of a restaurant, health care facility, recreation hall, arena, retail store, commercial establishment, office building, educational or financial institution or other places that are normally open to clients, customers, patients, students or other members of the public,</p> <p style="padding-left: 20px;">(b) a bus or other vehicle that is used to provide transportation to the general public for a fee,</p> <p style="padding-left: 20px;">(c) a school bus,</p>	<p>“health care facility” means a facility in which patients are or may be admitted for medical treatment or care and includes a hospital, nursing home and medical clinic;</p> <p>“smoke” or “smoking” includes the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking equipment;</p> <p>“smoking policy” means a written policy that attempts to accommodate the preferences of smokers and non-smokers in a workplace;</p> <p>“workplace” means any enclosed area of a building or structure in which an employee is employed.</p> <p>2.—(1) The council of the Corporation may pass by-laws,</p> <p style="padding-left: 20px;">(a) requiring every employer in the Borough of East York, within the time specified in the by-law and for the length of time specified in the by-law, to adopt and implement a smoking policy in respect of each workplace under the control, supervision or ownership of the employer;</p> <p style="padding-left: 20px;">(b) requiring every employer required by by-law to adopt and implement a smoking policy and every supervisor employed by that employer to maintain the smoking policy in the workplace for which it was adopted and to give notice of the adoption of the smoking policy to each employee in the workplace within the time specified in the by-law;</p> <p style="padding-left: 20px;">(c) providing that any area of a workplace, by reference to its principal use, shall not be a designated smoking area;</p>

By-laws
respecting
smoking in
the
workplace

- (d) requiring that designated smoking areas be clearly identified as such;
- (e) providing that, in establishing designated smoking areas, the employer shall take into account the concerns and preferences of both non-smoking and smoking employees;
- (f) providing that if a smoking policy has been adopted, a non-smoking employee may object to the employer about smoke in the workplace;
- (g) requiring an employer, if an objection has been made under clause (f), to attempt to reach a reasonable accommodation between the preferences of non-smoking and smoking employees using already available means of ventilation, separations or partitions, but not requiring employers, while the smoking policy is in effect, to make any expenditures or structural alterations to the workplace to accommodate the preferences of non-smoking employees;
- (h) requiring an employer to prohibit smoking in the workplace if the accommodation referred to in clause (g) cannot be reached to the satisfaction of all non-smoking employees in a workplace and to erect signs indicating the prohibition;
- (i) prohibiting any person from smoking in a workplace contrary to the smoking policy adopted for that workplace;
- (j) prohibiting any person from smoking in a workplace if smoking has been prohibited as required by by-law;
- (k) prescribing the size, location and details of the signs which an employer is required by the by-law to erect in that workplace;
- (l) providing that any employer or supervisor who permits smoking in a workplace contrary to the smoking policy adopted for that workplace or contrary to the prohibition under clause (h) is guilty of an offence;
- (m) prescribing the method by which any notice is required to be given by the employer or supervisor;
- (n) appointing inspectors for the purposes of this Act.

(2) Despite subsection (1), the council of the Corporation may pass by-laws,

- (a) requiring an employer to prohibit smoking in the workplace no earlier than one year after the enactment of a by-law under subsection (1), unless the workplace has been exempted under

clause (e), and to erect signs indicating the prohibition;

- (b) prohibiting any person from smoking in kitchen or food preparation areas of a dining room, cafeteria, restaurant or any other place where food is prepared and sold;
- (c) requiring every employer, required by by-law to prohibit smoking in the workplace, to give notice of such prohibition to each employee in the workplace within the time specified in the by-law;
- (d) providing that any employer or supervisor who permits smoking in a workplace contrary to a prohibition contained in the by-law is guilty of an offence;
- (e) exempting by permit, any workplace or part thereof from the prohibition referred to in clause (a), if designated smoking areas in a workplace are ventilated separately from the remainder of the building or structure.

3.—(1) The council of the Corporation may pass by-laws prohibiting or regulating smoking in enclosed public places or in any class of places during the time that the enclosed public places are actually open to the public.

By-laws respecting smoking in enclosed public places

(2) A by-law passed under this section may, Idem

- (a) designate by permit, or otherwise, areas where smoking is permitted in enclosed public places;
- (b) prescribe the size, location and details of the signs which must be erected in enclosed public places;
- (c) prohibit smoking in a restaurant or any area in it during the time that the restaurant or area is actually open to the public, unless the restaurant or area has been exempted under clause (d);
- (d) exempt by permit or otherwise, any restaurant or area in it from the prohibition referred to in clause (c), if the conditions for exemption outlined in the by-law have been met.

(3) A permit issued under this section may be subject to such conditions as council considers appropriate.

Conditions

(4) Nothing in this section limits the rights of a person in charge of an enclosed public place to further limit or ban smoking on all or part of the premises under that person's charge.

Further restrictions

By-laws prohibiting smoking in the workplace

Entry and inspection

4.—(1) For the enforcement of any by-law passed under this Act, an inspector may, during normal business hours, enter any workplace or enclosed public place or any building or structure in which a workplace or enclosed public place is situate and may make examinations, investigations and inquiries.

Identification

(2) An inspector shall, upon request, produce identification of his or her authority before exercising the power of entry.

Idem

(3) An inspector who enters a workplace or enclosed public place under subsection (1) may request the production of property relevant to the investigation and the person in control of the property shall make it available for inspection.

Removal of documents

(4) An inspector may remove a document in order to make copies but shall promptly return it to the person from whom it was taken.

Copies

(5) A copy of a document removed is admissible in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the original document and its contents.

Dwellings

(6) If a workplace or enclosed public place is also actually used as a dwelling,

(a) no inspector may enter that workplace or enclosed public place without the consent of the occupant or without first obtaining and producing a warrant; and

(b) the inspection is limited to that part of the dwelling used as a workplace or enclosed public place.

Obstruction

(7) No person shall hinder or obstruct an inspector lawfully carrying out the enforcement of any by-law passed under this section.

Application for warrant

(8) An inspector may apply to a justice of the peace for a warrant if an entry and inspection is reasonably necessary to enforce the by-law and if any person,

(a) denies entry or access to an inspector through or over a workplace or enclosed public place or through or over any building or structure in which a workplace or enclosed public place is situate;

(b) instructs or directs an inspector to leave a workplace or enclosed public place or any building or structure in which a workplace or enclosed public place is situate;

(c) obstructs an inspector from carrying out the enforcement of a by-law passed under this Act; or

(d) refuses to comply with a request for the production of any thing, the production of which is requested for the purpose of an examination, investigation or inquiry.

(9) A justice of the peace may issue a warrant authorizing an inspector to act as mentioned in clause (a) in respect of the workplace or enclosed public place or building or structure specified in the warrant, by force if necessary, together with such police officers as may be called upon to assist the inspector if the justice of the peace is satisfied on evidence under oath,

Issue of warrant

(a) that there is reasonable and probable ground for believing that it is necessary,

(i) to enter and have access to any workplace or enclosed public place or any building or structure in which a workplace or enclosed public place is situate to enforce the by-law, or

(ii) to make examinations, investigations and inquiries for the enforcement of any by-law passed under this Act; and

(b) that an inspector,

(i) has been denied entry to or directed to leave the workplace or enclosed public place or to any building or structure in which a workplace or enclosed public place is situate,

(ii) has been obstructed, or

(iii) has been refused production of any thing related to an examination, investigation or inquiry.

(10) A warrant issued under this section shall be executed between 6 a.m. and 9 p.m. unless otherwise specified in the warrant.

Timing

(11) A warrant issued under this section shall state the date upon which it expires, which shall be not later than fifteen days after the warrant is issued.

Expiration

(12) A justice of the peace may receive and consider an application for a warrant under this section without notice to and in the absence of the employer, owner, occupier or supervisor of the workplace or enclosed public place or of the building or structure in which a workplace or enclosed public place is situate.

No notice

5.—(1) Every person who contravenes this Act or a by-law passed under this Act is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 for a first conviction and not more than \$10,000 for each subsequent conviction.

Offence

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Idem, corporations	(2) If a corporation is convicted under subsection (1), the maximum penalty that may be imposed is a fine of not more than \$25,000 for a first conviction and not more than \$50,000 for each subsequent conviction.	6. This Act comes into force on the day it receives Royal Assent.	Commence- ment
		7. The short title of this Act is the <i>Borough of East York Act, 1992.</i>	Short title